

PT 03-17

Tax Type: Property Tax
Issue: Agricultural Purposes/Use
Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

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| THE DEPARTMENT OF REVENUE |) | |
| OF THE STATE OF ILLINOIS |) | |
| |) | Docket No. 02-PT-0026 |
| v. |) | PIN DOR 1859A |
| |) | Tax Year 2001 |
| VERMILION COUNTY FARM BUREAU |) | |
| |) | |
| Applicant |) | Dept. Docket #01-92-88 |

RECOMMENDATION FOR DISPOSITION

Appearances: George Logan, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Kerry D. Wienke, *pro se*, for Vermilion County Farm Bureau.

Synopsis:

This case concerns whether property that is located in Vermilion County and owned by Vermilion County Farm Bureau (“applicant”) qualifies for a property tax exemption for the year 2001. The applicant alleges that the property qualifies for an exemption on the basis that it is owned and used exclusively by an agricultural society pursuant to section 15-85 of the Property Tax Code (“Code”) (35 ILCS 200/1-1 *et seq.*). In the alternative, the applicant contends that the property is owned and used exclusively by a charitable organization pursuant to section 15-65 of the Code. The Department of

Revenue (“Department”) denied the exemption with respect to a portion of the property because the applicant leases the property to various organizations, including the United States Department of Agriculture (“USDA”) and the East Central Farm Business Farm Management (“FBFM”). The exemption was granted for property owned and used by the applicant. The applicant does not dispute the denial of the exemption with respect to the property leased to organizations other than the USDA and the FBFM. The applicant timely protested the denial concerning the property leased to the USDA and the FBFM, and an evidentiary hearing was held. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The applicant is a corporation that was incorporated in Illinois on July 12, 1920 under the Act Concerning Corporations of 1872, Ill.Rev.Stat. ch. 32, ¶159-190 (repealed). That Act included corporations not for pecuniary profit. (Applicant Ex. #4)

2. The applicant was organized to “promote the development of the most profitable and permanent system of agriculture possible in this county and the financial, educational and social welfare of its inhabitants in every legitimate and practical manner; to secure cooperative action in advancing the common purposes of its members and to give proper consideration to questions affecting the financial, commercial and civic interests in the county.” (Applicant’s Ex. #4)

3. The applicant owns property located at 1901, 1903, and 1905 U.S. Route 150 in Vermilion County. An office building is located on the property at 1905 U. S. Route 150, and this building has a total of 13,776 square feet. (Dept. Group Ex. #1; Applicant’s Ex. #6)

4. On July 27, 2000, the applicant entered into a lease agreement with the USDA for the use of 3,729 square feet of the building located at 1905 U.S. Route 150. This is approximately 27.07% of the building. The term of the lease is from September 7, 2000 through July 31, 2005, and the monthly rental is \$4,195.13 (\$13.50 per square foot annually). The lease indicates that the tenant shall use the leased premises for office space. (Dept. Group Ex. #1, pp. 7-9)

5. The USDA uses the space for Farm Services Agency & Natural Resources and Conservation offices. (Applicant's Ex. #6, p. 2)

6. According to its by-laws, the purpose of FBFM is to "be a non-profit association of cooperators cooperating with other farm organizations, other Farm Business Management Associations, with the College of Agricultural, Consumer and Environmental Sciences of the University of Illinois, and with the University of Illinois Cooperative Extension Service to promote efficient farm management through an extension, research, and service program, and otherwise to promote the agricultural welfare of the farmers in Illinois, provided the Association shall not engage in the practice of public accounting." (Applicant's Ex. #5)

7. According to FBFM's by-laws, "[a]ny farmer, landowner, or retired farmer residing in the area served by the Association may be admitted to membership in the Association upon such terms and conditions as may be prescribed by the Board of Directors." (Applicant's Ex. #5)

8. FBFM's by-laws state that "[t]he Board of Directors shall fix the dues and service fees to be collected from the members of the Association from time to time. Such

fees shall be in an amount sufficient to cover the cost of operation of the Association.
(Applicant's Ex. #5)

9. On March 23, 2001, the applicant entered into a lease agreement with FBFM for the use of 486 square feet of the building located at 1905 U.S. Route 150. This is approximately 3.53% of the building. The term of the lease is from November 1, 2000 to October 31, 2005. The monthly rental for the first two years of the lease was \$362 (\$8.94 per square foot annually). The lease indicates that the tenant shall use the leased premises only for the purpose of farm financial analysis, tax work, and bookkeeping services. (Dept. Group Ex. #1, pp. 10-13)

10. FBFM collects production and financial information and provides it to the University of Illinois. FBFM also gives seminars and bookkeeping services to farmers. FBFM uses the leased space for farm record keeping and tax work services for its members. (Applicant's Ex. #6, p. 2; Tr. pp. 12-13)

11. The applicant leases a portion of the building located at 1905 U.S. Route 150 to two other organizations, Midwest AgriCredit Co. and CC Services, Inc. The denial of the exemption for this portion of the property is not at issue. Midwest AgriCredit Co. leases 634 square feet for \$634 monthly (\$12 per square foot annually). CC Services, Inc. leases 1,260 square feet for \$1,575 monthly (\$15 per square foot annually). (Dept. Group Ex. #1, pp. 14-20)

12. The applicant leases 1,848 square feet of the building located at 1901 U.S. Route 150 to Tom E. Schoenherr d/b/a PDQ Lawn Care. The monthly rental is \$300 (\$1.95 per square foot annually). The denial of the exemption for this portion of the property is not contested. (Dept. Group Ex. #1, pp. 21-24)

CONCLUSIONS OF LAW:

Article IX, section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes. The General Assembly by law may grant homestead exemptions or rent credits. Ill.Const. (1970) art. IX, §6.

To implement a portion of this provision, the legislature enacted section 15-85 of the Property Tax Code, which allows exemptions for property used by agricultural societies and provides as follows:

Agricultural or horticultural societies. All property used exclusively by societies for agricultural or horticultural purposes, and not used with a view to profit, is exempt. (35 ILCS 200/15-85.)

As applied to the present case, section 15-85 sets forth two requirements for the exemption: (1) the property must be used exclusively by a society for agricultural purposes; and (2) the property must not be used with a view to profit.

It is well settled that property tax exemption provisions are strictly construed in favor of taxation. Chicago Patrolmen's Association v. Department of Revenue, 171 Ill.2d 263, 271 (1996). The party claiming the exemption has the burden of clearly proving that it is entitled to the exemption, and all doubts are resolved in favor of taxation. Id.; City of Chicago v. Department of Revenue, 147 Ill.2d 484, 491 (1992).

The applicant argues that the use of the property qualifies for the exemption because it is leased to two organizations that further the applicant's exempt purpose. The applicant contends that this case is similar to Childrens Development Center, Inc. v. Olson, 52 Ill.2d 332 (1972), where the court found that property that was leased from a religious organization to a charitable organization that used the property for a charitable

purpose was exempt. In the present case, the applicant contends that the USDA and FBFM are exempt organizations that use the property for an exempt purpose. The applicant asserts that if the Department is not questioning the applicant's exempt status, then it should also recognize the FBFM's exempt status because their purposes are similar.

The Department claims that Childrens Development Center has not been applied to allow exemptions for property leased to organizations other than charitable organizations that are given exemptions under section 15-65 of the Property Tax Code. The Department maintains that this case is more analogous to Village of Oak Park v. Rosewell, 115 Ill.App.3d 497 (1st Dist. 1983). In Village of Oak Park, the property was leased from a religious organization to a municipality, and the court determined that the property did not qualify for the exemption. The court found, inter alia, that the case was distinguishable from Childrens Development Center on the basis that the lessee was a municipality, which receives an exemption based on ownership only, not use. The Department states that the USDA is similar to a municipality in that its exemption is based on ownership only and does not depend on the use of the property. Also, the Department states that if FBFM is an extension of the University of Illinois, then it is considered a school, which receives an exemption based on ownership only. Because the USDA and FBFM would receive exemptions based only on their ownership of property, the Department believes that as lessees they disqualify the property for the exemption.

With respect to the property leased to the USDA, the applicant has established the first requirement for the exemption because the property is used exclusively for agricultural purposes. Administrative notice can be taken of the fact that the USDA is an

executive department of the United States Government organized pursuant to 5 U.S.C.A. §101 and 7 U.S.C.A. §2201 *et seq.* The duties of the USDA include acquiring and diffusing useful information on subjects connected with agriculture. 7 U.S.C.A. §2201. Because the USDA uses the property for this purpose, this is an exempt use.

The present case is distinguishable from the Village of Oak Park and Childrens Development Center cases because both those cases involved a religious organization leasing to another exempt entity. Unlike the statutory provision concerning religious exemptions, the provision concerning the agricultural exemption does not use the word “lease.”¹ The fact that the legislature did not include the word “lease” in the agricultural exemption cannot be disregarded. Because this word was omitted by the legislature, I do not believe that cases involving a religious institution as a lessor are relevant to cases involving an agricultural society as a lessor when analyzing this specific issue of whether property leased from one exempt organization to another qualifies the property for the exemption. As previously stated, the statute only requires the property to be used exclusively by a society for agricultural purposes and it must not be used with a view to profit. When an agricultural society leases property to an exempt organization that would otherwise receive its own exemption if it simply established ownership of the property, the statute does not indicate that this in and of itself would disqualify the property for the exemption. The statute first simply requires a determination as to the use of the property. The relevant inquiry is whether the property is used for agricultural purposes.

Despite the fact that the first requirement has been met for the property leased to the USDA, the applicant has not provided sufficient evidence indicating that the second

requirement for the exemption has been met. It is not clear from the record that the property is not used with a view to profit. The mere fact that property is owned by a non-profit corporation is not a basis for exempting the property from taxation. Turnverein Lincoln v. Board of Appeals of Cook County, 358 Ill. 135, 144 (1934). In determining whether property is used with a view to profit, it is immaterial whether the owner actually makes a profit or sustains a loss. Id. The relevant inquiry is whether the owner intends to use the property for profit. Coles-Cumberland Professional Development Corporation v. Department of Revenue, 284 Ill.App.3d 351, 354 (4th Dist. 1996); American National Bank and Trust Company v. Department of Revenue, 242 Ill.App.3d 716, 724 (2nd Dist. 1993).

In the present case, the USDA pays rent in the amount of \$13.50 per square foot. The applicant charges Midwest AgriCredit Co. and CC Services, Inc. \$12 and \$15 per square foot respectively. The applicant charges Tom E. Schoenherr d/b/a PDQ Lawn Care \$1.95 per square foot. The amount received from the USDA is a substantial rental amount that appears to be the market rate for commercial property. There was no explanation as to why the lawn care business, which is in a building next to the USDA, pays an amount that is significantly less than the amount paid by the other lessees.

The evidence does not indicate that the applicant did not intend to derive any economic advantage by leasing the building to the USDA. Although the applicant's executive director indicated that the applicant has not reached a break-even point on these properties, it is not material whether the applicant actually makes a profit or sustains a loss. Turnverein Lincoln at 144. By leasing the property for a rate that appears to be the

¹ The religious exemption provides in relevant part that "All property used exclusively for religious purposes * * * and **not leased** or otherwise used with a view to profit, is exempt." (emphasis added; 35

market rate, it is not clear that the applicant did not intend to enter into a commercial transaction when it leased the premises. Because the applicant has the burden of clearly proving that it is entitled to the exemption, without evidence showing that the property is not used with a view to profit, the exemption cannot be granted.

The same information is lacking with respect to the property leased to FBFM. The lease indicates that FBFM pays \$8.94 per square foot, which is much more than the \$1.95 paid by the lawn care business. No additional information was given regarding this lease, and it is unclear whether the applicant intended to derive income or benefit financially when it leased the property. The failure to prove that the applicant does not use the property with a view to profit must result in a denial of the exemption.

Although the applicant failed to prove that it did not use the property with a view to profit, the record indicates that FBFM uses the property exclusively for agricultural purposes. FBFM's by-laws are similar to the applicant's by-laws, and they indicate that FBFM was organized to promote efficient farm management. The applicant's executive director, Kerry D. Wienke, testified that FBFM collects production and financial information that helps farmers be more efficient. FBFM also provides seminars and bookkeeping services for farmers and keeps farm records. The applicant has therefore established the first requirement for the exemption.

During the hearing the applicant suggested that if FBFM is not an agricultural society then it is a charitable organization. Whether or not FBFM is a charitable institution does not affect the analysis concerning whether the applicant is entitled to the agricultural exemption for the property leased to FBFM. As previously stated, I cannot conclude that Childrens Development Center applies to the agricultural exemption, and

whether FBFM is a charitable institution is not relevant to the agricultural exemption analysis.²

As an alternative to the agricultural exemption, the applicant argues that a recent amendment to the provision concerning exemptions for charitable purposes supports its contention that it is entitled to an exemption. The amendment added the following highlighted paragraph:

Charitable purposes. All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity.

* * *

(c) Old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption, the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code or its successor, and either: (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services, or (ii) the home or facility is qualified, built or financed under Section 202 of the National Housing Act of 1959, as amended.

An applicant that has been granted an exemption under this subsection on the basis that its bylaws provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services may be periodically reviewed by the Department to determine if the waiver or reduction was a past policy or is a current policy. The Department may revoke the exemption if it finds that the policy for waiver or reduction is no longer current.

² Even if it were relevant, the evidence does not support the contention that FBFM is a charitable organization. The by-laws state that membership is restricted to farmers, landowners, or retired farmers, and there is no provision for the waiver of fees. It is reasonable to conclude, especially given the lack of evidence to the contrary, that FBFM's services are restricted to its members. Although there may be other reasons why FBFM is not a charitable organization, these facts alone strongly indicate that it is not a charitable institution. See Methodist Old Peoples Home v. Korzen, 39 Ill.2d 139, 156-57 (1968).

If a not-for-profit organization leases property that is otherwise exempt under this subsection to an organization that conducts an activity on the leased premises that would entitle the lessee to an exemption from real estate taxes if the lessee were the owner of the property, then the leased property is exempt. (emphasis added) (35 ILCS 200/15-65 (a), (c)).

This provision does not apply to the applicant because the applicant does not lease property that is “otherwise exempt under this subsection.” The applicant is clearly not an old people's homes or a facility for persons with a developmental disability, which are the first two organizations listed under subsection (c). The applicant also does not appear to fall under the third type of organization listed in this subsection. It does not appear to be a not-for-profit organization that provides services related to the goals of educational, social and physical development because the applicant's purpose indicates that its goals are related to economics. The applicant's purpose includes promoting the development of the most profitable system of agriculture and promoting the financial welfare of its inhabitants. In addition, even if the applicant is the third type of organization listed in subsection (c), the applicant did not provide its bylaws showing that it waives or reduces its fees based on an individual's ability to pay. The applicant has, therefore, not established that it falls within this charitable exemption.

The applicant contends that the Department has granted exemptions to other applicants for property leased to the USDA and other organizations similar to the FBFM. The applicant maintains that if the Department granted the exemptions in those cases, it should also grant the exemption in this case. The applicant has not presented any information concerning these cases, and a review of the decisions from the Office of Administrative Hearings did not disclose such cases. Nevertheless, whether an applicant

is entitled to an exemption is determined on a case-by-case basis. When an applicant meets the requirements for the exemption, the exemption will be granted.

Finally, the applicant contends that even if its request for the exemption is denied, the percentage of the exemption denied should be recalculated based on the square footage in the leases. The Department determined that the applicant was entitled to an exemption for 39.3% of the building and parking lot. During the hearing, the Department agreed that the amount of the exemption should be based on the square footage in the leases. (Tr. p. 11) According to the square footage in the leases, the exempt portion of the property should be 55.65% of the building and parking lot. (Applicant's Ex. #6)

Recommendation:

Based on the fore-going reasons, it is recommended that the applicant is entitled to an exemption for 55.65% of the building and parking lot located at 1905 U.S. Route 150. The remaining 44.35% of that property is not exempt. The Department's determination concerning the remaining property is upheld.

Linda Olivero
Administrative Law Judge

Enter: September 3, 2003